STATE OF SOUTH CAROLINA
BEFORE THE PUBLIC SERVICE COMMISSION

DOCKET NO. 2018-202-E

In Re:	)	
	)	IREC'S REPLY TO DUKE ENERGY CAROLINAS, LLC'S AND DUKE ENERGY PROGRESS, LLC'S OBJECTION TO IREC'S PETITION TO INTERVENE
Petition of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC for Approval of CPRE Queue Number Proposal, Limited Waiver of Generator Interconnection Procedures, and Request for Expedited Review	)	

Pursuant to Rule 103-829 of the South Carolina Public Service Commission's ("Commission") Rules and Regulations, the Interstate Renewable Energy Council, Inc. ("IREC") respectfully files this reply to Duke Energy Carolinas, LLC's and Duke Energy Progress, LLC's (collectively, "Duke") Objection to IREC's Petition to Intervene. For the reasons explained below, the Commission should reject Duke's argument that intervention is not proper and grant IREC's petition.

I. BACKGROUND

This Docket was opened on June 19, 2018, upon the filing of the Petition of Duke for Approval of CPRE[1] Queue Number Proposal, Limited Waiver of Generator Interconnection Procedures, and Request for Expedited Review ("Petition").

On August 17, 2018, IREC petitioned to intervene in this matter pursuant to Commission Rule 103-825 and to be made a party of record in the above-referenced

[1] Competitive Procurement of Renewable Energy

Docket, with full rights of participation.[2] IREC is specifically concerned with Duke's requested waiver of South Carolina's interconnection procedures, which, if approved, could impact the consumer interests that IREC represents by favoring large projects intended to serve another state's market over local projects intended to serve South Carolina ratepayers. Duke's proposal could result in a slower and more cost-intensive interconnection process for certain categories of projects in the South Carolina queue which could raise the cost of renewable energy for the South Carolina consumers IREC represents. Further, IREC devoted substantial time and resources to help develop the interconnection procedures in Docket No. 2015-362-E, and allowing Duke to waive crucial portions of those procedures, which ensure fair and non-discriminatory treatment for all consumers seeking to interconnect to the grid in South Carolina, would undermine IREC's substantial effort in developing them and circumvent the Commission's Rulemaking that was built on public participation.

II. ARGUMENT

A. Standing Is Not Required for Intervention in Commission Rulemaking Proceedings.

Under the Commission's Rules, *any* interested party—not just those who can overcome the hurdle of establishing constitutional standing[3]—must be allowed to

[2] S.C. Code Ann. Regs. ("Rule") 103-825 (all additional references to S.C. Code Ann. Regs. will be referred to as "Rules," as this section of the regulations lays out the Commission's Rules of Practice and Procedure).

[3] Constitutional standing requires a party show injury-in-fact, a causal connection between the injury and the conduct complained of, and redressability. *Sea Pines Ass'n for the Prot. of Wildlife v. S.C. Dep't of Natural Res. & Cmty. Servs. Assocs., Inc.*, 345 S.C. 594, 601, 550 S.E.2d 287, 291 (2001).

participate in a quasi-legislative, rulemaking proceeding.[4] This is the cornerstone of public participation in development of administrative rules and policies that have wide-ranging effect on a broad swathe of the public. But Duke tries to subvert public participation in this docket, which is tantamount to a rulemaking, by misapplying the Commission's precedent regarding intervention in quasi-adjudicatory proceedings, like complaints, which affect only the interests of limited parties. Indeed, as we will show, the Article III standing requirements that Duke references are essentially impossible to apply in the context of a rulemaking proceeding.

First, it is important to be clear that this is not a complaint proceeding, although Duke attempts to argue otherwise.[5] Here, Duke's request for a waiver of the interconnection procedures and substitution of a new proposal is a Petition for Rulemaking because Duke is asking the Commission to change the interconnection procedures as they apply to categories of customers. Indeed, Duke itself notes that it brings its Petition under Rule 103-825 (Petitions) and not under the rules for Complaints (Rule 103-824) or Applications (103-823).

A Petition for Rulemaking must include: "(a) The petitioner's interest in the subject matter; (b) The specific rule, amendment, *waiver* or repeal requested; (c) The statutory provision or other authority therefore; (d) The purpose of, and the grounds requiring, the proposed rulemaking."[6] Here, Duke has requested a waiver of the interconnection

[4] Rule 103-818(C)(3) ("The Commission shall provide an opportunity to interested parties for participation in the rulemaking proceeding, through submission of written data, views or arguments . . . .").

[5] Objection, pp. 5.

[6] Rule 103-825 (emphasis added).

procedures, which indicates that this is like a rulemaking proceeding.[7] The Petition further sets out Duke's interest in the subject matter, the authority to bring the petition, and the purpose of the request for the waiver—as is required for a Petition for Rulemaking.[8] Because this is a rulemaking-type proceeding, the Commission's Rules requires that "interested parties" must be provided an opportunity "for participation in the rulemaking proceeding through submission of written data, views or arguments."[9] This is exactly what IREC, an interested party with a history of participating in the Commission's interconnection rulemaking dockets, wishes to do.

Indeed, Duke can cite no authority requiring standing to participate in a rulemaking docket. The Commission's previous Orders cited by Duke, Order Nos. 2010-221 and 2013-911, are readily distinguishable.[10] While Duke argues these Orders establish precedent requiring standing in order to intervene before the Commission, both orders concern intervention in an *Application* under Rule 103-823 for "authorization or permission with the Commission is empowered to grant under its statutory authority, including applications for establishment of rates and charges"—a quasi-adjudicatory proceeding—not a Petition

[7] Pub. Serv. Comm. of S.C.; Dkt. 2018-202-E; Petition of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC for Approval of CPRE Queue Number Proposal, Limited Waiver of Generator Interconnection Procedures, and Request for Expedited Review; Petition to Intervene ("Duke Waiver Petition"), p. 1 (June 19, 2018).

[8] *Id.*, pp. 1-2, 7-13.

[9] Rule 103-818.

[10] *See* Objection, pp. 2-3 (citing Commission Order No. 2010-221 issued Mar. 16, 2010 in Docket No. 2009-489-E; Commission Order No. 2013-911 issued Dec. 18, 2013 in Docket No. 2013-392-E).

for Rulemaking, like the one here.[11] Duke cannot cite a single Commission order denying intervention in a rulemaking docket for lack of standing. Not only would such an order conflict with the Commission's mandates of public participation in rulemaking, but it would establish a standard that would be impossible for virtually *any* party to meet.[12]

No case or Commission order has required that a party prove standing in a rulemaking proceeding—to do so would effectively bar public participation in rulemaking. Article III standing relies on a fundamental premise that a party must first demonstrate "it has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical."[13] For example, federal administrative agencies do not require petitioners to demonstrate Article III standing because "[a]n administrative agency . . . is not subject to Article III of the Constitution of the United States, . . . so the petitioner [has] no need to establish its standing to participate in the proceedings before the agency."[14] In a rulemaking docket, it is not possible to demonstrate an actual injury in fact because the Commission has yet to hear the evidence and issue a rule that a party can demonstrate that they will be injured by. At this stage, *any* individual would be alleging a merely speculative harm because it is not yet clear what determination the Commission will make. Indeed, this is exactly why parties are generally prevented from challenging a

[11] *See* Order No. 2010-221 (application for a rate increase/adjustment); Order No. 2013-911 (application for a certificate of environmental compatibility and public convenience and necessity).

[12] Rule 103-818(C)(3)

[13] *Friends of Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167, 180, 120 S. Ct. 693, 704 (2000).

[14] *Sierra Club v. EPA*, 352 U.S. App. D.C. 191, 292 F.3d 895, 899 (2002).

regulatory action until it has been finalized.[15] Only final rules can determine the rights and obligations of parties, and allowing a court to weigh in before a rule was finalized would mean that no party would be able to demonstrate that its rights had been adversely affected.[16] Only after the Commission has issued its order creating or modifying a rule—and a party wants to challenge that rule in state court or assert an injury through erroneous application of that rule in a complaint proceeding[17]—would it be appropriate to require standing in the adjudicatory proceedings concerning the injuries of particular individuals who are seeking a specific remedy.[18] Rulemaking dockets are different: no one is alleging a particular injury; the parties are simply seeking to engage on development of a policy in which they have some interest.

This point is further demonstrated by the fact that the principal case on which Duke relies to support its argument that standing is necessary[19], discusses intervention in court

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[15] *Ctr. for Law & Educ. v. United States Dep't of Educ.*, 209 F. Supp. 2d 102, 111 (D.D.C. 2002) (rejecting challenge to rules when only the "proposed rules" had been published and a request for comments had been made, because only the "final rule, not the selections for the negotiated rulemaking committee or even the actions of that committee, [would] determine the rights and obligations of the parties" and the plaintiffs could not "even be sure that their interests [would] be adversely affected by the final rules that will be promulgated"); *see DRG Funding Corp. v. Sec'y of HUD*, 316 U.S. App. D.C. 159, 76 F.3d 1212, 1214-15 (1996) (no court review where the agency action had not yet "directly affected the parties or determined their rights or obligations" and the effect of the agency decision was premised on "the contingency of future administrative action").

[16] *Ctr. for Law & Educ. v. United States Dep't of Educ.*, 209 F. Supp. 2d at 111.

[17] We note, however, that in a complaint proceeding the Commission should be limited to adjudicating fair application of existing rules to the complainant. If the Commission or a party wishes to change the rules themselves then broader public participation in the proceeding would be warranted.

[18] *Sierra Club v. EPA*, 352 U.S. App. D.C. 191, 292 F.3d 895, 899.

[19] *Ex Parte Gov't Employee's Ins. Co.*, 373 S.C. 132, 644 S.E.2d 699 (2007).

pursuant to South Carolina Rules of Civil Procedure ("SCRCP"), Rule 24.[20] The case states: "a party must have standing to intervene in an action *pursuant to Rule 24, SCRCP*."[21] That is, a party must have standing to intervene in a court action. Rule 24 has nothing to do with participation in quasi-legislative, rulemaking proceedings. Nor do any of Duke's other cited cases concern intervention before the Commission in a rulemaking.[22]

Although, as explained below, IREC meets the standard for intervention under Rule 24, SCRCP,[23] nothing in the Commission's Rules suggests that Rule 24, SCRCP, applies to intervention in a proceeding before the Commission. Tellingly, the Commission's Rules *do* reference the SCRCP in certain circumstances, including the Rules on computation of time, subpoenas, and other discovery procedures. *See* Rules 103-831, 103-832, 103-835. But reference to the SCRCP is notably lacking from Rule 103-825. Rather, Rule 103-825 spells out the Commission's own requirements for persons seeking to intervene at the Commission, as described above. Had the Commission wanted to incorporate Rule 24, SCRCP, it could have; but it did not.

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[20] This is also the case cited in Order No. 210-221, which as noted above, denies a petition to intervene in an Application, not in a Rulemaking and so does not apply here.

[21] *Id.* at 138, 644 S.E.2d at 802 (emphasis added); *see* Objection, pp. 2, 5.

[22] *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992) (general case on standing); *Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n*, 407 S.C. 67, 76, 753 S.E.2d 846, 851 (2014) (citizens groups lacked standing to sue cruise ship operator for nuisance and zoning claims); *Sea Pines Ass'n for the Prot. of Wildlife v. South Carolina Dep't of Natural Res. & Cmty. Servs. Assocs., Inc.*, 345 S.C. 594, 601, 550 S.E.2d 287, 291 (2001) (community association lacked standing to sue the state over its extermination plan for white-tailed deer); *Duke Power Co. v. S.C. Public Service Com'n*, 284 S.C. 81, 98, 326 S.E.2d 395, 405 (1985) ("In order to have standing to present a case before the *courts* of this State, a party must have a personal stake in the subject matter of the lawsuit.") (emphasis added).

[23] As shown below, IREC can show an injury-in-fact if the Commission grants Duke's requested waiver of the procedures.

Because this is a rulemaking proceeding, the Commission's Rules require it to accommodate broad public participation. This participation is important to establishing well-reasoned rules, supported by a robust record, that potentially impact a wide array of South Carolina ratepayers. IREC has met the Commission's requirements for stating its interest in this rulemaking and participating as an intervenor. Establishing constitutional standing is not only not required, as Duke argues, but would conflict with the mandate that the public be allowed to participate in the development of public policy through rulemaking proceedings.

B. IREC Meets the Requirement under Rule 24, SCRCP.

Even if Rule 24, SCRCP applied to intervention in Commission rulemaking proceedings, IREC's satisfies this standard. South Carolina courts interpret Rule 24, SCRCP, broadly and have stated that "[i]ntervention should be liberally granted."[24] A party wishing to intervene should:

> (1) establish timely application; (2) assert an interest relating to the property or transaction which is the subject of the action; (3) demonstrate that it is in a position such that without intervention, disposition of the action may impair or impede its ability to protect that interest; and (4) demonstrate that its interest is inadequately represented by other parties.[25]

Here, there are no deadlines for a petition to intervene set out in the Commission's Rules. However, IREC filed its Petition to Intervene less than two months after Duke filed

[24] *Ken's Cabana, LLC v. Flemington Props., LLC (Ex parte Horry Cty. State Bank)*, 361 S.C. 503, 507, 604 S.E.2d 723, 725 (Ct. App. 2004); *see also Ex parte Gov't Employee's Ins. Co.*, 373 S.C. at 135, 644 S.E.2d at 701 ("The decision to grant or deny a motion to […] intervene in an action pursuant to Rule 24, SCRCP, lies within the sound discretion of the trial court."); *Berkeley Elec. Coop., Inc. v. Mt. Pleasant*, 302 S.C. 186, 189, 394 S.E.2d 712, 714 (1990) ("[I]ntervention controversies arise in a myriad of contexts. We interpret the rules to permit liberal intervention.").

[25] *Berkeley Elec. Coop.*, 302 S.C. at 189, 394 S.E.2d at 714.

its Petition, and it is therefore timely. Second, Duke's request for a waiver of the interconnection procedures undermines the Commission's rulemaking in Docket No. 2015-362-E. IREC invested substantial time and resources into this rulemaking to ensure that rules were created which treated projects fairly and in a non-discriminatory manner which Duke's proposal might undermine. Notably, in that Docket—also a rulemaking docket—IREC was granted permission to intervene[26] and was integral to the development of the final adopted procedures. The procedures adopted by the Commission were "the product of a number of working sessions and meetings convened by [the Office of Regulatory Staff] during which the Utilities and interested stakeholders reviewed and discussed the Utilities' proposed South Carolina interconnection procedures."[27] IREC participated in all four working group sessions, and the procedures adopted by the Commission incorporated "significant input and contributions from the stakeholder group," including proposals made by and advocated for by IREC.[28] IREC brought to the proceeding expertise about interconnection procedures that was important to the development of the record in that docket. To allow Duke to now waive the procedures for certain customers in a manner that could impact other customers' rights would harm IREC's interest in maintaining the fair and non-discriminatory procedures that were established in Docket No. 2015-362-E.

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[26] Pub. Serv. Comm. of S.C., Dkt. 2015-362-E, Joint Application of Duke Energy Carolinas, LLC, Duke Energy Progress, LLC and South Carolina Electric & Gas Company for Approval of the Revised South Carolina Interconnection Standard, Directive Order No. 2015-832 (Dec. 2, 2015).

[27] Pub. Serv. Comm. of S.C., Dkt. 2018-202-E, Joint Application of Duke Energy Carolinas, LLC, Duke Energy Progress, LLC and South Carolina Electric & Gas Company for Approval of the Revised South Carolina Interconnection Standard, Order No. 2016-191, p. 3 (Apr. 26, 2016).

[28] *Id*.

To meet the third requirement, "a party need not prove that it would be bound in a res judicata sense by the judgment, only that it would have difficulty adequately protecting its interests if not allowed to intervene."[29] If this proceeding waives certain procedures or otherwise modifies the rules, there would be no way for IREC to adequately protect its interest, and the broader consumer interests that are a primary focus of its organizational mission to protect, in fair practices that ensure the safe and efficient integration and adoption of renewable energy for the benefit of South Carolina customers, nor to protect its investment in the initial rulemaking to develop the procedures.

Fourth, and finally, the "burden [of demonstrating inadequacy of representation] is minimal and the [intervenor] need only show that the representation of his interests 'may be' inadequate."[30] One of the considerations in determining whether existing representation is adequate is "whether the intervenor offers different knowledge, experience, or perspective on the proceedings that would otherwise be absent." *Id.* The other intervenors in this proceeding are the Solar Business Alliance, Inc. and Ecoplexus, Inc.[31] The Solar Business Alliance represents the business interests of solar companies. Ecoplexus is a private, for-profit corporation supplying solar energy equipment and has an obligation to its investors and funders to advocate for its bottom line. IREC, by contrast, is an independent, non-profit that advocates for its mission to expand consumer access to clean energy for all consumers, including South Carolina consumers who will be directly affected by the waiver of the procedures. While Duke and the other intervenors will defend the rights of

[29] *Berkeley Elec. Coop.*, 302 S.C. at 190, 394 S.E.2d at 715.

[30] *Id.* at 191, 394 S.E.2d at 715.

[31] First Solar, Inc. filed a Petition to Intervene in this docket on August 29, 2018, and as of the time of this filing its request is pending.

their own shareholders, members, and investors, the issues at hand here would have a broader impact on the ratepaying public, and the Commission thus would benefit from the input from a wider range of stakeholders—as is already recognized in the Commission's Rules.[32] Ecoplexus and the Solar Business Alliance do not adequately represent IREC's broader interest, and IREC will offer its significant experience and perspective on group study processes and interconnection procedures to help the Commission evaluate whether the procedures should be waived and replaced with Duke's proposal. In addition to potentially harming the market opportunities for the projects owned by the Solar Business Alliance companies and Ecoplexus, Duke's proposed waiver also has the potential to drive up the cost of renewables overall in South Carolina, which could impact consumers as a whole, and particularly those that have an interest in seeing greater proliferation of renewables in the state.

C. IREC Has Standing to Intervene.

IREC also has standing to intervene in this proceeding.[33] To establish standing, the party must show that it has "a personal stake in the subject matter of a lawsuit and is a real party in interest […] who has a real, actual, material or substantial interest in the subject matter of the action, as distinguished from one who has only a nominal, formal, or technical interest in, or connection with, the action."[34] (Note that it is this additional requirement to show an "actual" interest that no party could meet prior to the Commission actually having issued a rule or order in a rulemaking proceeding like this one.) However,

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[32] *See* Rule 103-818.

[33] *See Ex Parte Gov't Employee's Ins. Co.*, 373 S.C. at 138, 644 S.E.2d at 802 ("a party must have standing to intervene in an action pursuant to Rule 24, SCRCP").

[34] *Id*. (internal citations omitted).

assuming the Commission does modify the interconnection procedures in the manner requested by Duke, IREC has a personal stake in seeing the procedures fairly implemented in the interest of the utility customers on whose behalf it advocates, as well as in protecting the time and resources it devoted to developing the procedures. IREC is a real party in interest based on its substantial participation in the prior interconnection procedures rulemaking.

Further, a favorable Commission decision would prevent Duke from modifying—without proper public participation—the process established, with IREC's help, by the Commission when it adopted the current interconnection procedures in Docket No. 2015-362-E. Specifically, Duke seeks to have certain of the interconnection procedures not apply to projects bidding into the CPRE program, and claims other projects would not be affected.[35] But this ignores the fact that resources to conduct studies of interconnection requests are limited, and Duke's proposal indicates that CPRE projects could be given preferential treatment over projects that remain in the queue to be studied serially. If Duke allocates those study resources to the CPRE projects first, those that are queued-ahead would be negatively impacted by having to wait longer to be studied.

On top of this, Duke's proposal is intended to devote grid capacity to projects intended to serve North Carolina consumers. By offering a favorable process for these projects, Duke's proposal could attract the lowest costs projects that would otherwise serve South Carolina's energy needs, leaving South Carolina consumers with reduced access to clean and affordable renewable energy.

[35] Petition, pp. 1-2.

South Carolina courts have also applied the Article III standing test set forth in *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992).[36] To satisfy this test, the party seeking standing must 1) have suffered an "injury in fact" that is "concrete and particularized" and "actual or imminent;" 2) show a "causal connection between the injury and the conduct complained of;" and 3) show that the injury could be redressed by a favorable decision.[37] As noted above, this standard is inapplicable in a rulemaking proceeding, but we will apply it as though the rule has been issued, as any party in this docket would have to in order to satisfy this standard.

First, if Duke's Petition for the waiver of the procedures is granted, IREC's considerable investment into their development will be harmed. This harm is concrete: IREC invested time and resources to develop the procedures, on behalf of South Carolina consumers interested in distributed renewable energy, that IREC now seeks to protect. It is also particularized—granting Duke's waiver would undermine the resources IREC invested in the rulemaking proceeding to develop the procedures. Additionally, the harm is imminent—should the Commission grant Duke's Petition, the consumers on whose behalf IREC advocates will be harmed by waiver of the procedures without a robust public process, as the law requires, and IREC's achievements in developing fair procedures will be undermined.

IREC has further noted that the waiver of the procedures could result in increases in interconnection timelines and costs for the smaller residential and commercial

[36] *See Sea Pines Ass'n* , 345 S.C. at 601, 550 S.E.2d at 291.

[37] *Id*. (quoting *Lujan*, 504 U.S. at 559-61, 112 S. Ct. at 2136) (internal citations omitted).

interconnection customers.[38] Specifically, as explained above, Duke's proposal seeks to establish a preferential group study process for projects bidding into the North Carolina CPRE program. Group studies would not be available to other projects, which must continue to move through the queue serially, and which may experience delayed study times and increased costs as Duke's study resources are focused on the CPRE group study. Further, Duke's proposal is likely to attract a number of projects that would have otherwise served South Carolina's renewable energy market to bid into the North Carolina programs. This will deprive South Carolina consumers of access to clean and affordable renewable energy from cost-effective projects, and risk raising costs for those ratepayers. Duke asserts that only its customers (either residential or interconnection) can bring these issues to the Commission's attention through intervention, but it cites neither Rules nor case law to support such a blinkered view.[39]

Next, Duke asserts that IREC's injuries are too speculative to confer standing and states that IREC has provided no factual basis for its contention that the waiver would result in increases in interconnection timelines or costs for customers.[40] On this point, we again note that *all* injuries are indeed speculative in a rulemaking proceeding. But, as explained above, Duke's proposal—which would waive some of the interconnection procedures intended to ensure fairness and replace them with an as-yet undefined internal policy that would not have the benefit of stakeholder input and Commission approval—has a strong likelihood of injuring non-CPRE projects and South Carolina electricity

[38] IREC Petition, pp. 3-4.

[39] *See* Objection, p. 4.

[40] *Id.*

consumers. Indeed, IREC expects that the discovery and responses during this rulemaking will help identify these increased costs and timelines and other impacts once Duke fully defines what exactly it intends to replace the waived procedures with. Further, Duke ignores IREC's substantial investment in developing the existing interconnection procedures when arguing that its injuries are too speculative.[41]

Second, there is a causal connection between the injury and the conduct complained of. IREC is intervening in this Commission proceeding to protect its interest in the procedures it helped develop. Further, this proceeding will determine whether Duke should be allowed to replace certain of those procedures with a group study process available only to certain projects seeking to serve the North Carolina market. This action—the prospective conduct complained of—will cause projects that do not participate in the CPRE program to face potential delays and will deny them access to potentially time- and cost-saving group studies that CPRE projects will be able to access.

Third, the harm is redressable by a favorable Commission ruling on a record enhanced by public participation. The Commission has the ability to accept, modify, or deny Duke's requested waiver of the procedures based on the record before it. With IREC's participation, the Commission will be able to make a better-informed decision on Duke's proposal and avoid causing the harms described above. Indeed, it is entirely possible that the Commission, through a robust and well-considered rulemaking process, could craft a rule that both accomplishes Duke's goals while also avoiding causing the injuries that IREC, Solar Business Alliance, Ecoplexus, and others may fear. It is by

[41] *See id.*

allowing participation as the Commission's Rules require[42] that the Commission will best be able to reach such an outcome. If participation from the public is barred in a rulemaking proceeding, purely at Duke's behest, then it is considerably more likely that the record the Commission has to base its rule on will lack important data and perspectives.

Duke makes several other allegations including saying that IREC's injuries are misleading because IREC is a non-membership organization.[43] However, once again, Duke cites no Rule or law that supports its argument that non-membership advocacy organizations can never have standing before the Commission in a rulemaking docket.[44] Non-profits like IREC, representing a broad range of public interests, have been allowed to intervene in countless Commission proceedings.[45] Indeed that is what is required by state law.[46] Duke attempts to distinguish these non-profits from IREC by pointing out that IREC has not identified any members. IREC is not a membership organization and has not hidden this fact from the Commission. Instead, it is governed by its bylaws which specifically allow advocacy on behalf of consumers, including utility customers, before agencies like the Commission.[47]

[42] Rule 103-818 ("The Commission *shall* provide an opportunity to interested parties for participation in the rulemaking proceeding through submission of written data, views or arguments. . .") (emphasis added).

[43] Objection, pp. 4-5.

[44] *See id.*

[45] *See* Docket Nos. 2017-245-E; 2017-35-E; 2017-207-E 2017-10-E; 2017-8-E; 2017-3-E; 2015-362-E; 2015-53-E; 2013-392-E; 2011-9-E (allowing intervention by various not-for-profits in other Commission proceedings).

[46] Rule 103-818.

[47] IREC Petition, p. 2 (IREC Bylaws art. I, § A and art. II, § C).

Furthermore, IREC is intervening to defend the integrity of the Commission's duly adopted procedures. To prevent IREC from intervening in this docket would be unjust and would set a dangerous precedent that allows Duke to effectively circumvent the Commission's rulemaking process by objecting when it fears a party will help create a record that does not fully support Duke's preferences. The Commission granted IREC's intervention in that docket, and the same polices are at issue here. Further, Duke's contention that IREC's intervention in Docket No. 2015-362-E was unopposed adds nothing to its argument.[48] The Commission must apply the same standards for intervention regardless of the presence or absence of opposition to that intervention.[49]

III. CONCLUSION

For the reasons described above and in the Petition, the Commission should adhere to its own Rules and grant IREC's Petition to Intervene and allow for public participation in this important rulemaking proceeding.

DATED: August 31, 2018

TERRENI LAW FIRM, L.L.C.

By: _____
FOR: CHARLES L.A. TERRENI

[48] *See* Objection, p. 5.

[49] *See* Rule 103-825.

DATED: August 31, 2018

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By: 

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STATE OF SOUTH CAROLINA
BEFORE THE PUBLIC SERVICE COMMISSION

DOCKET NO. 2018-202-E

In Re:	)	
	)	CERTIFICATE OF SERVICE
Petition of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC for Approval of CPRE Queue Number Proposal, Limited Waiver of Generator Interconnection Procedures, and Request for Expedited Review	)	

The undersigned, Amy Zehring, does hereby certify that the following persons have been served with one (1) copy of IREC'S REPLY TO DUKE ENERGY CAROLINAS, LLC'S AND DUKE ENERGY PROGRESS, LLC'S OBJECTION TO IREC'S PETITION TO INTERVENE in the above captioned proceeding by electronic mail at the addresses set forth below:

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Executed in San Francisco, CA on August 31, 2018

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